IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2762 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

SAIYAD ALUMUDDIN SAIYAD MOHMADKADRI

Versus

STATE OF GUJARAT

Appearance:
MR RN SHAH for Petitioner
MR UMESH TRIVEDI, ld.AGP for Respondent No. 1
MR RAJESH DESAI for MR PRASHANT G DESAI for Respondent No.3

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE J.R.VORA

Date of decision: 16/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

This Special Civil Application was filed in this Court on 26th March 1990 for quashing the notifications

issued under Sec.4 and 6 of the Land Acquisition Act and to direct the respondents not to dispossess the petitioner from the lands in question and seeking a declaration that the provisions of Sec.4 and 6 of the Land Acquisition Act are ultra-vires and violative of the provisions of Articles 23, 25 and 26 of the Constitution of India. So far as the challenge to the validity of the provisions of Sec.4 and 6 of the Land Acquisition Act are concerned, the same are not pressed by learned Counsel for the petitioner at the time of arguments. Even otherwise, there is no substance in the challenge to the validity of these provisions.

2. It is given out by Mr.R.N.Shah that the original petitioner, namely, Saiyad Alumuddin Saiyad Mohamad Kadri, the sole Trustee and Vahivatkarta of Bavasidi Kabrastan Trust at Saiyadpura, Surat expired on 18th Nov.1994 and therefore, a Civil Application No.2031 of 1995 was moved seeking to bring one Shri Saiyadali Saiyad Illumudin Kadri on record who had become the new Trustee in place of the original petitioner. Mr.Shah submits that the papers of the aforesaid Civil Application No. 2031 of 1995 could not be made available by the Registry, but Mr.Shah submits that this Civil Application was allowed and this petition is now pursued by Saiyadali Saiyad Illumudin Kadri as the petitioner in his capacity as the new Trustee and Vahivatkarta of Bavasidi Kabrastan Trust at Saiyadpura, Surat. Initially, only the State of Gujarat and the Special Land Acquisition Officer were arrayed as respondents nos.1 and 2. Subsequently, on the basis of an order dated 15th April 1993 passed in Civil Application No.82 of 1993, the Director of Town Planning, Surat Municipal Corporation, Muglisara, Surat was also arrayed as respondent no.3.

3. The petition was filed by the original petitioner as Vahivatkarta and Trustee of Bavasidi Kabrastan Trust (Graveyard Trust), challenging the acquisition of the land bearing Nodh No.1198 admeasuring 698-54-01 sq.mtrs. of land situated at Ward No.8, Surat seeking appropriate writ, order or direction for quashing and setting aside the impugned notifications under Sec.4 and 6 of the Land Acquisition Act issued on 4th Dec.1987 and 24th Nov.1988 respectively by the respondent no.2, i.e. the Special Land Acquisition Officer, No.4, Bhagwant Chamber, Muglisara, Surat. The petitioner came with the case that the Trust known as Bavasidi Kabrastan Trust is being used for graveyard and there are other monuments thereon. According to the petitioner, most of the portion was being occupied for the purpose of Kabrastan and the people residing in the said area also used to come for

worship as there are some tombs which are more than 200 years old and that the people have faith in the said tombs and that if the said land is acquired, it will affect their rights guaranteed under Articles 25 and 26 of the Constitution of India. It is also the case of the petitioner that certain portion of this land was being occupied by the poor people by putting up construction thereon surrounding the plot and that it was a Muslim locality. It has also been stated that the Municipality had proposed to acquire the said land and the Municipal Corporation of Surat through their Councillors dominated by Bharatiya Janata Party (BJP) proposed to acquire the said land for the purpose of public school in the said land and thereupon the respondent no.2 issued the notifications under Sec.4 of the Act on 4th Dec.1987. A copy of this notification dated 4th Dec.1987 has been annexed with the petition as Exh.A. It has also been stated that the notice under Sec.4(1) was also served upon the petitioner calling upon him to file objections as provided under Sec.5-A against the proposed acquisition and that the acquisition was sought for the so called public purpose of constructing a municipal school. That the petitioner filed his objections and requested for personal hearing and invited the attention of the authorities by pointing out that it was being used for the purpose of graveyard and that there is Kabrastan on this land for last 200 years and if the said land is acquired, the religious feelings of the community will be hurt and that the acquisition was sought only with a view to hurt the feeling of the Muslim community residing in the said locality because the residents of this locality did not vote for the candidate of BJP. It is also given out that there was no need to have a school in the said area as there were more than ten schools in the said area. The petitioner has also enclosed a list of the schools situated in the said area as per Exh.B. It was pointed out that there were schools in the said locality and these schools are located within a short distance from each other and therefore, there is no need to have any more school in the said area. According to the petitioner, the land was in fact not required for a public purpose of the municipal school and only in the name of this public purpose the land of graveyard belonging to the Trust and the Muslim community was sought to be taken away. Yet, without giving any personal hearing to the petitioner, the notification under Sec.6 was issued on 24th Nov.1988. The petitioner then made a representation but the Municipal Corporation did not drop the proceedings and the petitioner had to prefer the present Special Civil Application. The petitioner then states that the notification under Sec.4

was issued on 4th Dec.1987 and the substance thereof was not affixed at conspicuous places in accordance with law, the requirement under Sec.4 was not fulfilled, the proposal to acquire the said land was malafide as stated above on account of non-voting for the BJP candidate by the residents of the said locality who belonged to Muslim community and that it was only to take revenge on them that the proposal was made for acquiring the said land under the guise of public purpose for constructing municipal school. It was further stated that no permission had been granted for opening the new school and the residents of the locality were only sought to be harassed, that no opportunity of personal hearing was granted nor the report submitted by the authority to the respondent no.2 was made available to the petitioner and in fact no hearing was given and without application of mind as to whether the land was in fact required for the public purpose or not, the notification under Sec.6 was also issued. It was then stated that the land which was used as a graveyard had many monuments which were required to be preserved under the provisions of the Monuments Preservation Act, 1904 and under the provisions of the Ancient Monuments and Archeological Sites and Remain Act, 1958. The breach of the provisions of Sec.10 of the Ancient Monuments and Archeological Sites and Remain Act, 1958 was pleaded and it was also stated that the action of the respondents violates the provisions of Article 13 of the Constitution of India and thereby affects the fundamental rights guaranteed under the Constitution of India. It was also pleaded that the Collector had no jurisdiction to declare that the land in question to be necessary for the public purpose of constructing a school by acquiring the said land. It was also stated that the acquisition sought by the issuance of the notification under Sec.4 and 6 was colourable exercise of the powers, malafide and infringes upon the fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India. That it was not open for the respondents to interfere with the petitioner's rights by acquiring the said land in question. The impugned notifications were assailed to be ex-facie illegal and contrary to the provisions of the Act, and violative of Articles 23, 25, and 26 of the Constitution of India. The Municipal Corporation had proposed to acquire certain lands in 1979 also for the purpose of public school and having realised that there was reservation against the acquisition of land bearing No.1076 to 1080 situated at Ambaji Surat Road for the purpose of school, the same was released while the proceedings for acquisition of land in question were not dropped. On these facts, violation of Article 14 of the Constitution of India has been pleaded

and that the action of the respondents was discriminatory and was required to be set aside. It was also stated that in some portion of this land, poor persons are residing and carrying on their business and if the land in question is acquired, such poor persons will lose their livelihood and they will be without any occupation and therefore a direction was sought against the respondents not to take the possession of the land in question on the basis of the notifications issued under Sec.4 and 6 of the Act. On these averments, the petition was filed and the direction was sought for quashing and setting aside the notifications issued under Sec.4 and 6 of the Land Acquisition Act and a direction was sought against the respondents not to dispossess the petitioner from the land in question.

4. It appears that the petition had been dismissed in default, but the same was restored on 29th Jan. 1998 by an order passed by the Division Bench in Misc. Civil Application No.191 of 1998. Initially, the notice was issued on 27th March 1990 and the same was made returnable on 12th April 1990 and the order not to disturb the possession of the petitioner qua Survey No.1198 situated in Ward No.8 of Surat was granted by the Court. The Rule was then issued on 15th April 1991 and the ad-interim relief was continued. An affidavit-in-reply dated 30th July 1990 was filed by the respondent no.2. It was pleaded in this affidavit-in-reply that the Trust could not invoke the jurisdiction of this Court under Article 226 of the Constitution of India, that the land in question is not being used for the purpose of graveyard since long and further that the said place was not being used for worship since long; that during the personal visit of the acquiring authority and the Land Acquisition Officer, no tomb or monuments were found on this land; on the contrary it was found out that the petitioner had given the said place to other persons on rental basis for commercial purposes, i.e. Gas welding, garage etc. The allegation of surrounding locality being Muslim locality was denied and it was submitted that the acquiring authority, i.e. Surat Municipal Corporation had sent the proposal for the purpose of acquisition in the year 1982 and at that time the Congress Party was controlling the Municipal Corporation. It has also been denied that the proposal had been sent under the domination of BJP Councillors. It was then pleaded that the petitioner was given full opportunity of filing objections as provided under Sec.5-A and the petitioner's Advocate and other affected persons and their Advocates were also given full opportunity of hearing personally and that it was not

correct to say that the petitioner and other affected persons were not given any personal hearing before the issuance of the notification under Sec.6. The allegation that the substance of the notification under Sec.4 had not been affixed at any conspicuous place in the area and thus the requirement under Sec.4 of the Act was not fulfilled has also been denied. It has been stated that the substance of the notification under Sec. 4 was affixed at the conspicuous place and published on 19th Jan.1988 in presence of two panchas namely, Harifkhan Akhbhar and Jaswantbhai S. Patel. Thus, the requirement of Sec.4 of the Act had been fulfilled by the authority and the notification was not required to be quashed and set aside. It is then stated that the acquiring body and the Land Acquisition Officer had acquired the land in question for public purpose and there was no malafide intention on the part of the authorities and therefore the notification issued under Sec.6 being legal could not be quashed and set aside. The notification under Sec.6 of the Act was issued after giving full opportunity of hearing to the petitioner and other affected parties and after considering the objections filed by them, the notification under Sec.6 could not be said to be malafide or that it was issued without application of mind. The use of the land as graveyard has been denied and it has also been denied that the graveyard is required to be preserved under the provisions of the Monuments Preservation Act, 1904 and under the provisions of Ancient Monuments and Archeological Sites and Remain Act, 1958. It has also been submitted that there was no tombs and monuments on the land in question and the same is not required to be preserved under the above referred Act. It was pleaded that the authority had not violated any provisions, that the land in question was not a place of protected monuments under the provisions of Sec.10 of the Ancient Monuments Preservation Act, 1904 and it was not a place of worship under Sec.13-A of the Ancient Monuments and Archeological Sites and Remain Act, 1958. While the land in question was not being used for worship since long, there was no question of hurting the religious feeling of the Muslim residents of the area and under the circumstances, the right of worship guaranteed under Articles 25 and 26 of the Constitution of India was not going to be affected. As has been stated in earlier part of the affidavit-in-reply, the land in question was not a monument or a place of worship. The acquisition of the land will not violate the fundamental rights guaranteed under Article 23 of the Constitution of India and thus, the notifications under Sec.4 and 6 were legal.

5. On behalf of the Surat Municipal Corporation, a

separate reply dated 6th July 1996 had been filed contesting the petitioner's claim.

6. Having heard both the sides, and having gone through the pleadings as referred to above, we are of the opinion that there is no basis to hold the action of the respondents to be malafide or that the notification had been issued and the decision had been taken to acquire the land in question, in colourable exercise of the power. The allegations of malafides have been made, but such oral allegations cannot be considered to make out a case of malafides. The bald plea of malafide has been raised but the allegations are not at all substantiated nor it has been given out as to how there was any political influence so as to precipitate the question of acquisition of the land of the graveyard. The links to make out the case of malafides are totally wanting and on the basis of the bald and vague allegations as have been levelled in this petition, it is not possible for this Court to hold that the action of the respondents suffers from any malice and hence there is no case to hold the State action to be malafide.

7. In fact, a notification No. M.U.N.S. 366 dated 7th Jan.1956 has been produced by Mr.R.N.Shah himself appearing on behalf of the petitioner during the course of arguments and this notification shows that the Kabrasthan on Survey No.1186 and 1198 of Ward No.8 of Surat shall not be used for disposal of the dead from 20th Jan.1956. The contents of this notification No. M.U.N.S. 366 dated 7th Jan.1956 are reproduced as under in order to show that after 1956, the land must not have been used for the purpose as has been pleaded because as per this notification, the Kabrastan was not to be used for disposal of the dead beyond 20th January 1956:

"NOTIFICATION
No. M.U N S 366.

WHEREAS the Surat Borough Municipality is of opinion that continuation of the use of the Place, known as Bava Sidi Kabrastan, in C.S. No.S. 1186 and 1198 of ward No.8 situated within the Municipal limits of the Surat Municipality, District Surat, for the purpose of the disposal of the dead is likely to become injurious to health of the residents of the surrounding localities. I, therefore, K.L.Panjabi, I.C.S. Director of Local Authorities, Northern Division, in exercise of the powers conferred under Section 185(1) of the Bombay Municipal Boroughs Act,

1925, do hereby direct that the above kabrastan shall not be used for disposal of the dead from twentieth January 1956.

K.L.Panjabi
Director of Local Authorities"
Northern Division.
Shahibagh, Ahmedabad, 4.
7th January, 1956."

8. We find no illegality whatsoever in the notifications issued under Sec.4 and 6. The objections had been filed by the petitioner, the same were taken into consideration and in such matters, it is not necessary that a personal hearing has to be afforded while it has been pleaded by respondents that even the advocates had been personally heard. Learned Counsel for the petitioner could not point out any illegality so as to warrant interference by this Court with the proceedings of acquisition. The argument that this land being a small piece of land could not be made use of for the purpose of establishing a public school and that there were already existing ten schools in the area is hardly a ground for us to interfere under Article 226 of the Constitution of India because it is given out by Mr.Umesh Trivedi, ld.AGP that all these ten schools are private schools and there was no school of the Municipal Corporation in the said area and as such the land has already been acquired and the award has already been declared. It is also given out by Mr.Desai for the respondent Municipal Corporation that the amount has already been deposited by the acquiring body, i.e. the Municipal Corporation of Surat with the Government. Thus the entire proceedings are over, but only the possession could not be taken because there was an interim order passed by this Court. However, it is still open for the petitioners to approach the Municipal Corporation of Surat and the State Government if it can be considered by them that now, after so many years, it is not necessary to establish this public school at the lands in question. In any view of the matter, this Court does not find any case for interference. If any such representation is made by the petitioner before the Municipal Corporation of Surat or the State Government, they are free to take any decision as they may deem fit in accordance with law.

9. In the facts and circumstances of this case, we do not find any merit in this Special Civil Application. The same is hereby rejected. The Rule is hereby discharged. The interim order dated 27.3.1990 stands

vacated. No order as to costs.

(M.R. Calla, J.)

(J.R. Vora, J.)

Sreeram.